

LAW OFFICE OF JAY R. YABLON

Patent • Trademark • Copyright • Trade Secret • Licensing

JAY R. YABLON

910 Northumberland Drive
Schenectady, New York 12309-2814
Phone/Fax: 518-377-6737
E-Mail: jyabl0n@nycap.rr.com

April 12, 2010

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**RE: PETITION UNDER 37 CFR §1.313 TO WITHDRAW FROM ISSUE, WITH INFORMATION DISCLOSURE
FOR: SERIAL NUMBER 10/561,285; ART UNIT 3762; FILED 12/20/05;
EXAMINER: GEORGE C. MANUEL
TITLE: USE OF MACHINE LEARNING FOR CLASSIFICATION OF MAGNETO CARDIOGRAMS**

Dear Sirs,

This is a petition under 37 CFR §1.313 to withdraw the above referenced application 10/561,285 from issue. This petition is being filed at the initiative of applicants, *prior to the payment of the issue fee*, and so is governed by MPEP §1308 I.A. The required submission is the information disclosure statement below, as well as an information disclosure form SB-08 and one non-patent literature reference also transmitted herewith.

Also transmitted herewith is an EFS-Web payment for \$310 total, which includes the \$130 petition fee under 37 CFR §1.17(h), and \$180 for an information disclosure under 37 CFR §1.17(p).

Information Disclosure Statement

The reference disclosed herewith was co-authored by one of the co-inventors Mark Embrechts and published in January 2003, approximately six months before the filing of US provisional application 60/483,961 filed July 1, 2003 from which this application claims benefit. Because co-inventor Embrechts is a co-author of this publication, the disclosures in this publication are not "by another" and were not "more than one year prior to" the July 1, 2003 priority date of the subject application 10/561,285.

Nonetheless, this reference was cited in a recent February 9, 2010 office action for a counterpart application in Europe, which is an "absolute novelty" jurisdiction and does not provide for the one year period before a statutory bar is raised, as does 35 USC §102(b) in the United States. While applicants do not believe this reference is pertinent to patentability in the United States, they nonetheless do believe in light of the recent citation of this reference in Europe that it is important to withdraw this application from issue and file this information disclosure.

Petition for Withdrawal from Issue; Request for Reissued Notice of Allowance

Applicants therefore respectfully petition for withdrawal from issue of this application and

request a review of this information disclosure, to be followed by a reissued notice of allowance confirming applicants' view that this reference does not in any way bar patentability of the claims pending in application 10/561,285 under any provisions of 35 USC §102 or §103, either on its own, or in combination with other art of record.

Request for determination whether \$180 Information Disclosure Fee is required

It is also applicant's view that the \$180 information disclosure fee being filed herewith under 37 CFR §1.17(p) is in fact unnecessary. This is because "each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement" and a statement to this effect has been provided under 37 CFR 1.97(e)(1), and because under 37 CFR 1.97(c) all that is required to be filed is said statement *or* the fee set forth in 37 CFR §1.17(p).

Nevertheless, because this publication is by, and was therefore known to, one of the inventors, and although it is believed to be not pertinent to patentability in the United States, the 37 CFR §1.17(p) fee has been included with this filing just to be certain that this information disclosure is being properly submitted in light of the fact that this is a publication of an inventor. *Applicants' respectfully ask examiner or the Technology Center Director, at the time this petition is ruled upon, or in a subsequent office action or reissued notice of allowance, to also advise whether this fee was in fact necessary, so applicants' can file for a refund in the event this fee payment is deemed to have been unnecessary.*

Certification statement

I hereby certify that all statements made herein of my/our own knowledge are true, all statements made herein on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and may jeopardize the validity of the application or any patent issuing thereon.

Very Truly Yours,



Jay R. Yablon
Registration # 30604

CERTIFICATION OF EFS-WEB TRANSMISSION UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being to the United State Patent Office via EFS-Web on the transmission date of April 12, 2010.

Name of Person signing this certificate: Jay R. Yablon

